TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~951.~~ 125

REUBEN TOMLINSON, JOHN R. STOLL, PHILIP HELLER, DR. R. VAMPILL, R. J. HUMPHREY, E. W. M. MACKEY, W. W. WARD, ROBERT COLLINS, AND THOMAS C. COX, APPELLANTS,

vs.

MORRIS K. JESSUP.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED OCTOBER 17, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 351.

REUBEN TOMLINSON, JOHN R. STOLL, PHILIP HELLER, DR. R. VAMPILL, R. J. HUMPHREY, E. W. M. MACKEY, W. W. WARD, ROBERT COLLINS, AND THOMAS C. COX, APPELLANTS,

vs.

MORRIS K. JESSUP.

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INDEX.

	Original.	Print.
Subpœna	2	1
Return on subpœna	4	2
Bill of complaint	8	4
Affidavit to bill of complaint	29	10
Order for writ of preliminary injunction	30	11
Return on order	32	11
Answer of the Northeastern Railroad Company	37	14
Answer of E. W. M. Mackey, W. W. Ward, Thomas C. Cox, and Robert Collins	40	15
Affidavit to answer of Mackey et al	41	15
Answer of Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, and R. J. Humphrey	42	16
Affirmation to answer of Tomlinson et al	49	18
Replication of Morris K. Jessup	50	18
Decree of perpetual injunction	53	19
Summons to Northeastern Railroad Company to join in appeal	53	19
Return on summons	55	20
Notice of severance	56	20
Appeal	57	21
Waiver of security	59	21
Certificate of clerk	62	22
Citation	63	22

1 THE UNITED STATES OF AMERICA,
District of South Carolina, to wit:

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 1871, before the Honorable Hugh L. Bond and the Hon. George S. Bryan, judges of the said United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such cases made and provided, the following proceedings were had:

MORRIS K. JESSUP, A CITIZEN OF THE STATE of New York,
vs.
REUBEN TOMLINSON, A CITIZEN OF THE STATE of South Carolina, The North Eastern Railroad Company, John R. Stoll, Phillip Heller, Dr. R. Vampill, R J. Hunphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, citizens of South Carolina.

2 Be it remembered that heretofore, to wit, the first Monday in April, in the year of our Lord one thousand eight hundred and seventy-one, the said Morris K. Jessup, impleaded the said Reuben Tomlinson, The North Eastern Railroad Company, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, in a bill of complaint for injunction and relief as follows:

3 *Subpœna.*

UNITED STATES OF AMERICA,
Fourth Circuit, State of South Carolina:

The President of the United States of America to Reuben Tomlinson, The North Eastern Railroad Company, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox:

You are hereby strictly commanded and enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of July next, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of Morris K. Jessup, a citizen of the State of New York.

And, also, that you do, on the rules day next immediately after the day appointed and expressed, file or cause to be filed in the registry
4 of said court, your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid,

the eighth day of June, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fourth year of the sovereignty and independence of the United States of America.

SIMONTON & BARKER,
Complainant's Solicitors.

D. HORLBECK,
C. C. C. U. S. for South Carolina.

And L. E. Johnson, marshal of the said United States for the district aforesaid, returned said subpœna endorsed as follows:

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, June 8, 1870.

I hereby depute R. Collins spec. dept. marshal to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

MARION, S. C., *June 14th*, 1870.

I hereby certify that I acknowledge receipt of copy of subpœna in the within case on the 10th day of June, 1870.

R. COLLINS.

5 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, June 8th, 1870.

I hereby depute R. Collins spec. dep. U. S. marshal to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

MARION, S. C., *June 14th*, 1870.

I hereby certify that I executed the within process by serving a copy subpœna on R. Vampill, county treasurer Marion County, in person, on the 13th day of June, 1870.

R. COLLINS,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, June 8th, 1870.

I hereby depute Jno. A. Shiell to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

COLUMBIA, *June 11th*, 1870.

I hereby certify that I executed the within process by serving a copy subpœna in the within case on Mr. Reuben Tomlinson, state auditor, personally, on the 11th day of June, 1870.

JNO. A. SHIELL,
Special Deputy.

6 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, June 8th, 1870.

I hereby depute H. E. P. Sanders spec. deputy marshal to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

I hereby certify that I executed the within process by personally serving a copy of the within subpœna writ on Thomas C. Cox, sheriff of Darlington County, personally, on the 9th day of June, 1870.

HENRY E. P. SANDERS,
Special Dep.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8 *June*, 1870.

I hereby depute H. E. P. Sanders spec. dep. to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

DARLINGTON, *June*, 1870.

I hereby certify that I executed the within process by personally serving a copy of the within subpœna writ on R. J. Humphrey, county treasurer of Darlington County, personally, on the 9th day of June, 1870.

HENRY E. P. SANDERS,
Special Deputy.

7 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8 *June*, 1870.

I hereby depute S. A. Swails spec. dep. U. S. M. to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

I hereby certify that I executed the within process by serving a copy of subpœna on Philip Heller county treasurer of Williamsburg County, personally, on the 10th day of June, 1870.

S. A. SWAILS,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, June 8th, 1870.

I hereby depute S. A. Swails, spec. dep. U. S. M. to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

KINGSTREE, *June 10th*, 1870.

I hereby certify that I executed the within process by serving a copy

of subpœna on W. W. Ward, sheriff of Williamsburg County, personally, on the 10th day of June, 1870.

S. A. SWAILS,
Special Deputy.

8 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8th June, 1870.

I hereby depute W. D. Hannifin spec. dep. U. S. M. to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

CHARLESTON, *June 9th,* 1870.

I hereby certify that I executed the within process by serving a copy of the within, personally, on A. F. Ravenal, president of the N. E. R. R.; E. W. M. Mackey, sheriff, personally, John R. Stoll, county treasurer, personally, on the 9th day of June, 1870.

W. D. HANNIFIN,
Special Deputy.

And, on the said eighth day of June, A. D. 1870, comes into court the said Morris K. Jessup, by Simonton and Barker, his solicitors, and filed his bill of complaint for injunction and relief against the said Reuben Tomlinson, John R. Stoll, Philip Heler, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, Thomas C. Cox, and the Northeastern Railroad Company, in words and of the tenor following

9 In the circuit court in equity.

THE UNITED STATES,
South Carolina District, Fourth Circuit:

To the honorable the judges of the fourth circuit of the United States:

The bill of complaint of Morris K. Jessup, a citizen of the State of New York, against Reuben Tomlinson, a citizen of South Carolina, The Northeastern Railroad Company, a body corporate by act of the general assembly of the State of South Carolina; John R. Stoll, a citizen of South Carolina; Philip Heller, a citizen of South Carolina; Dr. R. Vampill, a citizen of South Carolina; R. J. Humphrey, a citizen of South Carolina; E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, citizens of South Carolina, showeth unto your honors that—

1st. Your orator is the bona-fide owner of three thousand nine hundred and forty-six shares of the capital stock of the Northeastern Railroad Company, one of the defendants; that the said Northeastern Railroad Company is a body corporate by an act of the general assembly of the State of South Carolina, passed the sixteenth day of
10 December, in the year eighteen hundred and fifty-two, and has been since its oganization, and is now, doing business in the State of South Carolina, under its charter and the amendments thereto; that Reuben Tomlinson is the auditor of the State, and, with D. H. Chamberlain, attorney general; Niles G. Parker, who is the state treasurer; J. L. Nagle, who is comptroller general; and F. L. Cardozo, who is secretary of state, constitute a board, styled "The State board of equalization;" that John R. Stoll is the county treasurer of Charleston County, Philip Heller is the county treasurer of Williamsburg County; that Dr.

R. Vampill is the county treasurer of Marion County, and R. J. Humphrey is county treasurer of Darlington County.

2. That by section 1 of an act of the general assembly, passed the nineteenth day of December, A. D. 1855, entitled "An act to amend the charter of the Northeastern Railroad Company, and for other purposes," it was enacted "that the stock of the Northeastern Railroad Company, and the real estate that it now owns, or may hereafter acquire, which is connected with, or subservient to, the works authorized
11 in the charter of the said company, shall be, and the same is hereby, exempted from all taxation during the continuance of the present charter of the said company."

3d. That the said acts of the legislature of the State of South Carolina, constituting the charter of said Northeastern Railroad Company, were accepted by the company, and are a contract on the part of the State of South Carolina, out of which certain legal rights arose, and under which they have become vested in said company so incorporated, in the creditors of said company, and in divers other persons who have dealt with said company, upon the faith of its chartered rights, privileges, and exemptions, and the obligations of which contract cannot be impaired.

4th. That your orator, upon the faith of said contract, became a purchaser of shares of the capital stock of said company, and has outlayed large sums of money in acquiring the rights of a shareholder therein.

5th. That said Northeastern Railroad Company has fulfilled all of the requirements of its charter and is well entitled to protection in
12 all the rights, privileges, and exemptions which belong to it under the contract with the State.

6th. That, by an act of the general assembly of the State of South Carolina, passed at a special session in the year 1868, entitled "An act providing for the assessment and taxation of property, it was declared—

"SEC. 11. The president and secretary of every railroad company whose track or road-bed, or any part thereof, is in this State, shall annually, between the first of September and twentieth of October, return to the auditor of state, under their oaths, the total length of said road; the total length of said road in this State, and the length thereof in each county, township, city, and incorporated village in this State; the total length of their double track in this State, and the length thereof in each county, township, city, and incorporated village in this State; the total length of all their side-tracks, and the length thereof in each city, county, township, and incorporated village in this State;
13 the location and value of all their shops, depots, grounds, station-houses, wood and water stations, buildings, stationary engines, tools, implements, and fixtures in South Carolina, and all other real estate necessary to the daily running operations of the road; the number and value, each, of all their locomotive engines, passenger, freight, platform, gravel, construction, hand, and other cars; the value of their moneys and credits; the total value of the entire road, appurtenances, and equipments, and the total value of said road in South Carolina, with its appurtenances and equipments.

"SEC. 12. The president and secretary of every railroad company mentioned in the preceeding section shall also annually, between the first of September and the twentieth of October, return to the county auditor of each county in South Carolina, through or into which such road, or any part thereof, may be located, a statement of the value of said road, and the property of the company in said county, and in each of the townships, cities, and villages of said county, through or into which said

road, or part thereof, is located, in the manner and form required by this act, in the return to the auditor of the State.

14 "SEC. 13. In ascertaining the value of the road and property of any railroad company, the value of the right of way, bed, and track of the whole road shall be fixed, and such value apportioned pro rata to each mile of the main track; and to the value of the number of miles of main track in each township, city, and incorporated village of each county in this State through and into which said road is located shall be added the value of the real estate, fixtures, stationary engines, tools, implements, machinery, and other stationery property provided for use in the daily operations of the road, situate in said township, city, or village, and the total value of the rolling-stock, moneys, and credits shall be apportioned pro rata to each mile of the main track of said road, and the amount thereof, according to the number of miles of main track in each township, city, and village in this State, added to the value of the main track in such township, city, and village respectively, and the aggregate value of said road and property in this State, and in

15 each county, city, township, and incorporated village of this State through or into which said road is located, shall be stated in said return.

"SEC. 14. The return and oath required by this act of officers of railroad companies shall be made in such form as shall be prescribed by the auditor of state.

"SEC. 15. If any railroad, its appurtenances, equipments, etc., shall be in the hands of a receiver or other officer, such receiver or other officer shall make the returns by this act.

"SEC. 16. The auditor of state, or any person appointed by him for that purpose, may put any question in writing he may deem proper to any officer, agent, or receiver of any railroad company having any portion of its track in this State, and he may summon any officer, receiver, or agent of such company to appear before him and testify under oath, (which said auditor is authorized to administer,) touching such railroad company's property, and the management and disposition thereof; and he may, by himself or some person appointed by him, examine the books and papers of such company, in the hands of the company, or any

16 of its officers, agents, or receivers, and all such officers, agents, and receivers shall answer under oath all such questions as shall be put to them, or either of them, by said auditor, or any person appointed by him for that purpose, relative to the condition, amount, and value of said company's property, and the management or disposition thereof; and if any such officer, receiver, or agent shall refuse or neglect to appear before said auditor, or the person appointed by him, or to answer any question put to him or them as aforesaid, or submit the books and papers aforesaid for examination in manner aforesaid, he shall be deemed guilty of a misdemeanor, and, upon indictment and conviction therefor, in the court of general sessions for any county, (which court shall have complete and full jurisdiction in all such cases,) shall be fined in any sum not exceeding five hundred dollars, and costs of prosecution, and confined in the jail of said county until he answers all questions which may be put to him by the auditor of state, and until said fine and costs be paid.

17 "SEC. 17. The auditor of state, treasurer of state, secretary of state, comptroller general, and attorney general of the State shall constitute a State board of equalization, (a majority of whom shall constitute a quorum for transaction of business,) who shall meet at the office of the auditor of state, at the capital, on the second Wednesday of No.

vember, annually, and equalize the value of the property of railroad companies, whose roads are wholly or partially in this State, as returned to the auditor of state under the provisions of this act, by increasing the value of the roads and property of such companies as shall have been, in their judgment, returned at too low a valuation, and diminishing the values of such as may have been returned at too high a valuation. They shall keep a record of their proceedings, which shall be signed by all the members present, and deposited with, and kept by, the auditor of state; and a majority of the members present shall be competent to decide all questions which may come before said board.

"SEC. 18. The auditor of state shall certify to the county auditor
18 of each county in which any railroad, or part thereof, may be located, the valuations of railroad property in said county, as returned to him, with all additions made to, or deductions from, the valuation of the property of any railroad in said county, by the State board of equalization; and the county auditor shall charge the railroad company in the several townships, cities, and incorporated villages of their county, for taxation, with the valuations returned by such company or companies, after adding thereto, or deduducting therefrom, the amounts directed by the auditor of state.

"SEC. 19. If any railroad company, or its officers, shall fail to make the returns to the auditor of state required by this act on or before the twentieth day of October, annually, the State board of equalization shall proceed to ascertain the value of said company's road and property, according to the principles prescribed in this act, from the best information they can conveniently obtain, and add thereto fifty per centum as penalty, and apportion the same to the several counties, townships, cities, and incorporated villages, through or into which said
19 road, or any part thereof, may be located; and the State auditor shall certify the same to the several county auditors, who shall place the same on their duplicates for taxation, and if any such company, or their officers, shall fail to make the return to any county auditor required by this act, the State auditor shall ascertain the amount properly chargeable to such company in said county, and certify the same to the proper county auditor, adding ten dollars thereto as penalty, (the whole of which penalty shall be paid into the State treasury;) and the county commissioners shall charge such company, in the proper municipalities, with the taxes on the value so certified by the State auditor, and charge said company on the duplicate, separately, with said ten dollars, without charging any taxes thereon; and the county treasurer shall pay the same into the State treasury at his first annual settlement after the collection thereof."

7th. That, subsequently, by an act approved the 28th February, 1870, entitled "An act to alter and amend an act entitled 'An act to provide for the assessment and taxation of property,'" the legislature did,
20 in section 5 of said act, declare that the collection of taxes shall not be stayed or prevented by any injunction, writ, or order issued by any court or officer, except as provided in this act, and in the "act to provide for the assessment and taxation of property aforesaid."

And in the same act it is further provided as follows, by section 6: "Whenever any person or persons charged with taxes upon the books of any tax collector in this State shall state in writing to said collector that he or they have been erroneously or illegally charged with the same, said collector shall submit to the county auditor a full statement of the facts in the case, which statement shall be forwarded to the State auditor, with such additional information relating thereto as the said

county auditor may be able to give; and said tax collector shall not be required to proceed against the party or parties so claiming to have been erroneously or illegally charged with taxes, by distress or otherwise, until the State auditor shall, in writing, direct him so to do."

21 And by section 7th. "In an action or proceeding against any tax collector, for the purpose of recovering any property or money alleged to have been erroneously or illegally assessed and collected, the party bringing such action or proceeding shall make it appear that a notice in writing of the claim on which said suit may be brought was given to said tax collector in pursuance of the sixth (6) section of this act; and unless it shall be made to appear that said collector has proceeded contrary to the provisions of this act, the amount recovered in such suit shall not exceed the value of the property or money aforesaid."

8. That, by the 81st section of the same act, passed at the special session in 1868, it was also provided that "if any taxes charged on any real estate be regularly paid, and such real estate be erroneously returned delinquent and sold for such taxes, the sale shall be totally void; or if any taxes shall be illegally assessed and collected, when the same shall become known to the county auditor he shall, on demand of

22 the party interested, submit the matter to the auditor of the State, and if the auditor of state approve thereof, in writing, the amount paid by the purchaser at such void sale, or the amount so illegally collected, shall be repaid to the party paying the same out of the county treasury on the order of the county auditor; and so much of the said taxes as shall have been paid into the State treasury shall be refunded to the county treasury, and the county auditor shall retain the same in his next annual settlement and charge the State therewith." That the president and secretary of the Northeastern Railroad Company were called upon by Reuben Tomlinson, State auditor, to make their return, under the eleventh, twelfth, thirteenth, and fourteenth sections of said act, and, as your orator is informed and believes, complied therewith, under protestation, however, on behalf of the company, and its stockholders and creditors, against the alleged liability of the company to make such returns for assessments and taxation under

23 said act, claiming the exemption of the company under the charter from the State as a contract obligation. That the State auditor, disregarding said protest, has certified the valuations of property of said company made and apportioned under said act to the several county auditors, who have respectively charged the said railroad company in the several townships, cities, and incorporated villages of their counties for taxation.

9. That, by the 35th section of the said act of 1868, "it is declared that the county treasurer may enforce the collection of any tax or penalty assessed under this act at any time after the same becomes due, by distraint, attachment, or other legal proceedings instituted in his name as such treasurer; and in case of his death or retirement from office before the collection of such taxes or penalties, his successor in office or subsequent treasurer may be made a party to such proceedings and prosecute the same to final judgment and execution." That John R. Stoll, county treasurer for Charleston County; Philip Heller, county treasurer for Williamsburg County; D. R. Vampill, county treasurer for

24 Marion County; R. J. Humphrey, county treasurer for Darlington County, have notified the Northeastern Railroad Company that if the tax is not paid on the property of the said company in the respective counties executions will be issued against the property of the

said company, and your orator is informed and believes that, in most if not all of said counties tax executions have been lodged with the sheriffs thereof. Your orator is informed that the sheriff of Williamsburg County, one W. W. Ward, has seized upon the engine and cars of the said company under and by virtue of such tax execution and holds the same in his custody, to the great injury of the said company and to the creditors thereof, as well as to the public inconvenience and loss.

10. That E. W. M. Mackey, sheriff of Charleston County; W. W. Ward, sheriff of Williamsburg County; Robert Collins, sheriff of Marion County; and Thomas C. Cox, sheriff of Darlington County, hold similar executions and threaten like action against the said company.

25 11. That the said Northeastern Railroad Company, as your orator is advised, is unable, by any proceedings permitted to be issued out of the courts of the State, to protect the property of the corporation—which is the property of the stockholders—from the great wrong and injury with which it has been threatened, and which is now about to be enforced. That, by the 6th section of the act approved 28th February, 1870, it is positively declared that the collection of taxes shall not be stayed or prevented by any injunction, writ, or order, issued by any court or officer, except as provided in this act or the act of the special session of 1868. That, by the 6th section of the act approved 28th February, 1870, the power is reserved to the State auditor to decide whether the tax complained of as erroneous or illegally charged shall be collected. That if the State auditor shall decide that such taxes have not been erroneously or illegally charged, no injunction, writ, or order of any court shall stay the collection of said tax. That, in section 7 of the act of 28th February, 1870, a remedy is professed to

26 be given, by an action against the tax collector, but it is wholly uncertain and inadequate. In section 8 of the same act it is provided that the judgment, if recovered in such suit, shall be paid in the manner provided in the 81st section of act passed at the special session of 1868. And the 81st section, so referred to, contemplates no payment in any case, unless the auditor of the State shall approve thereof in writing. That thus judicial power is taken from those to whom under the constitution of the State it is committed, the exercise of it by them in certain cases prohibited, and that power and the exercise of it transferred to the State auditor.

12. That thus, while all protection is denied to the Northeastern Railroad Company against the collection of the tax, although illegal, no certain adequate relief at law can be had for the recovery of the same, although illegally collected, unless the State auditor shall assent thereto.

13. That your orator having been informed of the tax assessed, and payment of which is to be enforced on the property of the

27 Northeastern Railroad Company, applied to the president and directors of the company to resist the same; but, as your orator is informed, said company has failed to take any steps necessary thereto beyond the protest entered with the return to the State auditor abovementioned, and declares itself powerless to protect itself and its property.

Your orator is informed that, if forced to pay the said tax, no adequate means are available to recover back the money, or the property, if sold. That the only remedy at law would be an action against the tax collectors—who are irresponsible persons. But that the act aforesaid does not allow a recovery against these officers by a judgment against them personally, nor is there any certain or adequate means of redress pro-

vided by law. That the repayment of the money so illegally obtained is at the pleasure of the State, which is beyond reach of suit in the premises. And your orator is without remedy, save in this honorable court.

To the end, therefore, that the several parties named as defend-
28 fendants may full, true, and perfect answer make to the premises: that the said John R. Stoll, the county treasurer for Charleston County; Philip Heller, the county treasurer for Williamsburg County; Dr. R. Vampill, county treasurer for Marion County; and R. J. Humphrey, county treasurer for Darlington County, may be restrained and enjoined from proceeding in each of their respective counties for which they are the county treasurers, by execution or other process of any kind, from enforcing the payment of the taxes so in each county certified to them and charged against the said Northeastern Railroad Company upon the value of its property so returned: that E. W. M. Mackey, sheriff of Charleston County; W. W. Ward, sheriff of Williamsburg County; Robert Collins, sheriff of Marion County, and Thomas C. Cox, sheriff of Darlington County, may be restrained from enforcing said executions and process respectively: that the said Northeastern Railroad Company and its officers may be restrained and enjoined from the payment of the taxes so demanded by the said county treasurers, and for such other and further relief as to your honors may seem meet,
29 may it please your honors to grant unto your orators your writ of injunction enjoining and restraining the sa'd Reuben Tomlinson, State auditor, John R. Stoll, county treasurer for Charleston County, Philip Heller, county treasurer for Williamsburg County, Dr. R. Vampill, county treasurer for Marion County, and R. J. Humphrey, county treasurer for Darlington County, E. W. M. Mackey, sheriff of Charleston County, W. W. Ward, sheriff of Williamsburg County, Robert Collins, sheriff of Marion County, and Thomas C. Cox, sheriff of Darlington County, their agents and attorneys, from doing or causing to be done, all or any of the matters and things hereinbefore complained of, and also your writ of subpœna, directed to the said Reuben Tomlinson, the Northeastern Railroad Company, John R. Stoll, Phillip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, commanding them on a certain day, and under a certain penalty to be therein named, to be and appear before your honors, then and there true, direct, and perfect answer to make to all and singular the premises, and to abide by
30 and perform such further order and decree in the premises as may be made.

And your orator will ever pray, and so forth.

SIMONTON & BARKER,
Solicitors.

THE STATE OF SOUTH CAROLINA:

Before me personally appeared Theodore G. Barker, and being duly sworn, on oath says that the facts set forth in the foregoing bill are true, so far as they come within his own knowledge, and such as are derived from the information of others he believes to be true.

THEODORE G. BARKER.

Sworn to before me this eighth day of June, A. D. 1870.

EDWARD M. CRADY, JUN'R,
Notary Public & Ex-off. Mag.

And, on the eighth day of June, A. D. 1870, the said Morris K. Jessup, by Simonton & Barker, his solicitors, came into court, and on their motion obtained an order for a writ of preliminary injunction against the said Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, Thomas C. Cox, and the Northeastern Railroad Company, in words and of the tenor following:

31 THE UNITED STATES,
Fourth Circuit, South Carolina District:

In the circuit court. In equity.

MORRIS K. JESSUP, A CITIZEN OF NEW YORK,
vs.
REUBEN TOMLINSON, STATE AUDITOR, A CITIZEN of South Carolina, The Northeastern Railroad Company, and others.

Hearing the complainants' bill and affidavit of Theodore G. Barker, it is ordered that a writ of injunction do issue to Reuben Tomlinson, State auditor; John R. Stoll, county treasurer for Charleston County; Philip Heller, county treasurer for Williamsburg County; Dr. R. Vampill, county treasurer for Marion County; R. J. Humphrey, county treasurer for Darlington County; E. W. M. Mackey, sheriff for Charleston County; W. W. Ward, sheriff for Williamsburg County; Robert Collins, sheriff for Marion County; Thomas C. Cox, sheriff for Darlington County, commanding and enjoining them, and each of them, until the further order of this court, from proceeding to collect, impose, or levy by execution, attachment, or other process, from the North-
32 eastern Railroad Company, or upon the stock or real or personal estate owned by said company, on which it may hereafter acquire, any tax or taxes purporting to be imposed under any act of the legislature of the State of South Carolina, and commanding the sheriffs of said counties, and each of them, to release from his or their custody any of the property of said company which they, or either of them, may have seized under any tax execution issued by order of any of the aforesaid officers of the said State.

It is further ordered that a writ of injunction do issue to the Northeastern Railroad Company, commanding and enjoing it and its officers, agents, and servants from paying any portion of the tax or taxes levied or purporting to be levied under any act of the legislature of the State until the further order of this court.

8th June, 1870.

GEO. S. BRYAN,
U. S. Judge, S. C. Dist.

Which order L. E. Johnson, marshal of the said United States for the district aforesaid, returned endorsed as follows:

33 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8 June, 1870.

I hereby depute R. Collins spec. dep. U. S. marshal to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

MARION, S. C., *June 14th*, 1870.

I hereby certify that I executed the within process by serving a copy of within injunction on R. Vampill, county treasurer Marion County, in person, on the 13th day of June, 1870.

R. COLLINS,
Special Deputy.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, June 8th, 1870.

I hereby depute R. Collins spec. deputy U. S. marshal to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

MARION, S. C., *June 14th*, 1870.

I hereby certify that I acknowledge serving of copy of injunction in within case on the 10th day of June, 1870.

R. COLLINS.

34 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, June 8th, 1870.

I hereby depute Jno A. Shiell to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

COLUMBIA, *June 11th*, 1870.

I hereby certify that I executed the within process by serving a copy of injunction in within case on Reuben Tomlinson, State auditor, personally, on the 11th day of June, 1870.

JNO. A. SHIELL,
Spec. Dep.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8 June, 1870.

I hereby depute H. E. P. Sanders spec. dep. to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

I hereby certify that I executed the within process by personally serving a copy of the within injunction on Thomas C. Cox, sheriff of Darlington County, personally, on the 9th day of June, 1870.

HENRY E. P. SANDERS,
Spec. Dep.

35 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8 June, 1870.

I hereby depute H. E. P. Sanders spec. dep. to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

DARLINGTON, *June 9th*, 1870.

I hereby certify that I executed the within process by personally serving R. J. Humphrey, county treasurer for Darlington County, with a copy of the injunction in this case, viz, Morris K. Jessup vs. Reuben Tomlinson et al., on the 9th day of June, 1870.

HENRY E. P. SANDERS, *S. D.*

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8 *June*, 1870.

I hereby depute S. A. Swails spec. dep. U. S. M. to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

KINGSTREE, *June*, 1870.

I hereby certify that I executed the within process by serving a copy of injunction on Philip Heller, county treasurer for Williamsburg County, in person, on the 10th day of June, 1870.

S. A. SWAILS,
Spec. Dep.

36 UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8 *June*, 1870.

I hereby depute S. A. Swails spec. dep. U. S. M. to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

KINGSTREE, *June*, 1870.

I hereby certify that I executed the within process by serving a copy of injunction on W. W. Ward, sheriff of Williamsburg County, personally, on the 10th day of June, 1870.

S. A. SWAILS,
Spec. Dep.

UNITED STATES MARSHAL'S OFFICE,
SOUTH CAROLINA DISTRICT,
Charleston, 8 *June*, 1870.

I hereby depute W. D. Hannifin to execute the within process.

L. E. JOHNSON,
U. S. Marshal.

CHARLESTON, *June 9th*, 1870.

I hereby certify that I executed the within process by serving a copy of the within personally on E. W. M. Mackey, sheriff of Charleston County, and on John R. Stoll, county treasurer for Charleston County, on the 9th day of June, 1870.

W. D. HANNIFIN,
Special Deputy.

37 And, on 27th day of June, A. D. 1870, comes into court the said Northeastern Railroad Company, by Theodore G. Barker, its so-

licitor, and to the bill of complaint of the said Morris K. Jessup files its answer, in words and of the tenor following:

Answer of N. E. R. R. Co.

UNITED STATES OF AMERICA,
District of South Carolina:

MORRIS K. JESSUP, A CITIZEN OF NEW YORK,
vs.
REUBEN TOMLINSON, A CITIZEN OF SOUTH Carolina, The Northeastern Railroad Company, et als.

The separate answer of the Northeastern Railroad Company, one of the defendants, to the bill of complaint of Morris K. Jessup, complainant.

This defendant, saving to itself all right to except to said bill, for answer to so much thereof as it is advised is material, answering, saith:

1. That it admits that complainant is the owner of the shares of the capital stock of the Northeastern Railroad Company as stated in the bill; that said company is a body corporate under the act of assembly named.

2. That the act of 1855, by which the property of the said
38 Company is exempted from all taxation is correctly recited, and that the acts of the legislature of the State of South Carolina constituting the charter of the said company were accepted by it as a contract on the part of the said State with this defendant; that, upon the faith of said exemption, the road was constructed, fully equipped, and has been conducted, since the date of the completion thereof, for the benefit of the said State and the public; that the entire capital stock paid in and purchased since 1855, and the entire bond debt of the corporation and other engagements and obligations made and entered into with the company by creditors and others, have been had and done upon the faith of the said exemption from taxation therein contained as a contract binding upon the State.

3. This defendant admits that, under the act of the general assembly passed A. D. 1868, and the act of 1870, which are correctly set forth in
39 the bill, the State auditor, as stated, in disregard of the protest of this defendant, has certified the valuation of the property of the Northeastern Railroad Company, made and apportioned under said act to the several county auditors, who have respectively charged the said raidroad company in their several counties; that said valuation amounts, as defendant is informed, to the sum of one million five hundred thousand dollars, and the amounts charged by the several county auditors for taxation sum up the total amount of tax of thousand dollars, besides penalties and costs.

4. This defendant admits that it has been notified by the county treasurers that executions will be enforced against the property of the company in their respective counties in case the taxes and penalties and costs are not paid; this defendant admits that it has been advised by counsel learned in the law that no measures could be adopted by it to resist the demand for said taxes or prevent a sale of the property of

the company under said executions; and this defendant prays to
40 be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

T. G. BARKER,
Def'ts' Solicitor.

And on the first day of July, A. D. 1870, come into court the said Reuben Tomlinson, John R. Stoll, Philip Heller, R. Vampill, and R. J. Humphrey; and also the said E. W. M. Mackey, W. W. Ward, Thomas C. Cox, and Robert Collins, by D. H. Chamberlain, attorney general of the State of South Carolina, their solicitor, and file their answers, in words and of the tenor following:

41 In the circuit court in equity.

THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

MORRIS K. JESSUP
vs.
R. TOMLINSON, THE NORTHEASTERN RAILROAD Company, and others.

The joint and several answers of E. W. M. Mackey, W. W. Ward, Thomas C. Cox, and Robert Collins, impleaded in the case of Morris K. Jessup against Reuben Tomlinson, The Northeastern Railroad Company, and others.

1. E. W. M. Mackey, for himself, says that he is the sheriff of the county of Charleston, in the said State. W. W. Ward, for himself, says that he is the sheriff of the county of Williamsburg, in the said State. Robert Collins, for himself, says that he is the sheriff of the county of Marion, in the said State. Thomas C. Cox, for himself, says that he is the sheriff of Darlington County, in the said State.

2. These defendants, for further answer, say that, as to the matters set forth in the said bill of complaint wherein these defendants are impleaded, they have no knowledge; that they are not in any manner
42 concerned in the controversy therein embraced, and that they are not charged by law with any duty in connection with the subject-matters of the said bill of complaint.

Wherefore, these defendants, having now made all answer in their power, pray the order of this honorable court, dismissing them from this cause, wherein they have been wrongfully impleaded.

D. H. CHAMBERLAIN,
Attorney General, for Defendants.

STATE OF SOUTH CAROLINA,
Charleston County:

Personally appeared before me, E. W. M. Mackey, one of the defendants, who make the foregoing answer, and, on oath, says that the matters and things therein set forth are true so far as they depend on his own knowledge, and so far as they depend upon information, he believes them to be true.

E. W. M. MACKEY,
Sheriff, Charleston Co.

Sworn to and subscribed before me this 30th day of June, 1870.
H. H. D. BYRON, *Notary Public.*

43 In the circuit court in equity.

THE UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

MORRIS K. JESSUP
vs.
REUBEN TOMLINSON, THE NORTHEASTERN Railroad Company, & others.

The joint and several answers of Reuben Tomlinson, John R. Stoll, Philip Heller, R. Vampill, and R. J. Humphrey, citizens of the State of South Carolina, to the bill of complaint of Morris K. Jessup, a citizen of the State of New York.

1. Reuben Tomlinson, for himself, says that he is the auditor of the State of South Carolina, and is by law charged with the duty of administering and enforcing the tax laws of the said State. John R. Stoll, for himself, says that he is the county treasurer for the county of Charleston, in the said State, and is by law charged with the duty of collecting the taxes laid by the laws of the said State upon the property within the said county.

Phillip Heller, for himself, says that he is the county treasurer for the county of Williamsburg, in the said State, and is by law
44 charged with the duty of collecting the taxes laid by the laws of the said State upon the property within the said county.

R. Vampill, for himself, says that he is the county treasurer for the county of Marion, in the said State, and is by law charged with the duty of collecting the taxes laid by the laws of the said State upon the property within the said county.

R. J. Humphrey, for himself, says that he is the county treasurer for the county of Darlington, in the said State, and is by law charged with the duty of collecting the taxes laid by the laws of the said State upon the property within the said county.

2. These defendants, further answering, say that it is true, as set forth in the said bill of complaint, that the said Northeastern Railroad Company is a body corporate by the laws of the said State, doing business therein under a charter conferred by act of the general assembly of the said State and the amendments thereto, and that the property of the said corporation, lying within the said State, has been assessed for
45 taxation in the manner set forth in the said bill of complaint, and under the authority of the act of the general assembly of the said State, entitled "An act to provide for the assessment and taxation of property," passed September, 1868, and set forth more particularly in the said bill of complaint, to which reference is hereby made.

3. That, by the constitution of the said State, in article second, section second, it is declared that "the property of corporations now existing or hereafter created shall be subject to taxation, except in cases otherwise provided for in this constitution." And that in article ninth, section first, of the said constitution, it is further declared that the "general assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, real, personal, and possessory, except mines and mining claims, the proceeds of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious

or charitable purposes." And that, saving and exc'pting these,
46 no other exemptions are provided in said constitution.

4. That it is true, as set forth in the said bill of complaint, that by section first of an act of the general assembly of the said State, passed December 19th, 1855, entitled "An act to amend the charter of the Northeastern Railroad Company, and for other purposes," it was enacted that "the stock of the Northeastern Railroad Company and the real estate that it now owns, or may hereafter acquire, which is connected with, or subservient to, the works authorized in the charter of said company, shall be, and the same is hereby, exempted from all taxation during the continuance of the present charter of the said company.

5. But these defendants, further answering, say that, by an act of the general assembly of the said State, passed December 17th, 1841, in the forty-first section thereof, it is enacted, "that it shall become part of the charter of every corporation which shall, at the present or any succeeding session of the general assembly, receive a grant of a
47 charter, or any renewal, amendment, or modification thereof, (unless the act granting such charter, renewal, amendment, or modification shall in express terms except it,) that every charter of incorporation granted, renewed, or modified as aforesaid shall at all times remain subject to amendment, alteration, or repeal by the legislative authority."

6. That the said section, as above recited, has never been repealed, and was of force and effect when the charter of the said Northeastern Railroad Company was granted, and did, as matter of law, enter into and form part and parcel of said charter of said company, and that, in consequence thereof, the said charter of said company has been and is at all times subject to amendment, alteration, or repeal by the legislative authority.

7. That, upon the adoption of the present constitution of the said State, and the passage of the said act hereinbefore named, "to provide for the assessment and taxation of property," the exemption from taxation before granted to the said Northeastern Railroad Company
48 was repealed, and that thenceforth the said company became liable, and is now liable, to taxation under the laws of the said State.

8. That no contract between the said Northeastern Railroad Company and the said State has been violated by the assessment and taxation under existing laws of the property of the said Northeastern Railroad Company, inasmuch as the right to repeal, modify, or amend the said charter was at all times expressly reserved by the State.

9. These defendants, further answering, say that it is true by section fifth of an act of the general assembly of the said State, entitled "An act to alter and amend an act to provide for the assessment and taxation of property," passed February 28th, 1870, it is enacted that "the collection of taxes shall not be stayed or prevented by any injunction, writ, or order, issued by any court or officer, except as provided in this act and in the act to provide for the assessment and taxation of property."

49 10. That, by the provisions of the sixth and seventh sections of the said act last above named, and also by the eighty-first section of the act to provide for the assessment and taxation of property hereinbefore referred to, all of which are fully set forth in the said bill of complaint, and to which reference is hereby made, a full, complete, adequate, and convenient remedy at law is given for the recovery of taxes

illegally assessed and collected upon any property within the said State; and that therefore this honorable court ought not to interfere by its writ of injunction to stay the collection of the taxes laid upon the property of the said Northeastern Railroad Company, and the said company is not aggrieved by the laying of the said taxes, and is entitled to no relief therefrom at the hands of this honorable court.

Therefore, these defendants having now made all needful answer to the said bill of complaint, pray to be hence dismissed with their costs.

D. H. CHAMBERLAIN,
Att'y General of the said State for Defendants.

50 STATE OF SOUTH CAROLINA,
Charleston County:

Personally appeared before me Reuben Tomlinson, one of the defendants, who make the foregoing answer, and on affirmation says that the matters and things therein set forth are true to the best of his knowledge and belief.

REUBEN TOMLINSON.

Affirmed and subscribed before me this 29th day of June, 1870.
JOHN HEART,
Notary Public.

And, on the first day of August, A. D. 1870, the said Morris K. Jessup comes again into court, by his attorneys aforesaid, and to the answers of the said Northeastern Railroad Company, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, and R. J. Humphrey, files his replication in words and of the tenor following:

51 *Replication.*

In the United States court, fourth circuit. In equity.

MORRIS K. JESSUP
vs.
REUBEN TOMLINSON.

These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had or taken to the manifold uncertainties and insufficienties of the said defendants' answers, for replication thereto, say that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the answer of the said defendants is uncertain, evasive, and insufficient in law to be replied to by these repliants; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto by these repliants, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things these repliants are ready to aver, main-
52 tain, and prove as this honorable court shall direct; & humbly pray as in and by their said bill they have already proved.

SIMONTON & BARKER,
Complainants' Solicitors.

And, on the twenty-seventh day of April, A. D. 1871, come again into

court the parties aforesaid, by their solicitors aforesaid, and, after hearing the pleadings, and after argument by the solicitors of the said parties, on motion of Simonton and Barker, solicitors for the said Morris K. Jessup, it was ordered and decreed by the said court as follows:

53 *Order of perpetual injunction.*

United States circuit court, fourth circuit, South Carolina district.
In equity.

MORRIS K. JESSUP, A CITIZEN OF NEW YORK,
vs.
REUBEN TOMLINSON, A CITIZEN OF SOUTH CAROLINA, et als.

Hearing the pleadings in this cause, on motion of Simonton & Barker, solicitors for complainant, ordered that the injunction heretofore granted be continued, and the same is hereby made perpetual.

April 27th, 1871.

GEO. S. BRYAN,
U. S. Judge, Dist. of S. C.

54 In equity.

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

The President of the United States of America to the Northeastern Railroad Company:

You are hereby summoned to be and appear before the judges of the Supreme Court of the United States, at the Capitol at Washington, on the first Monday of December next, then and there to join with Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humprey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, in prosecuting an appeal from the decree of this court granting a perpetual injunction against you and the said Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, on the complaint of Morris K. Jessup.

And also that you do, within thirty days from the service hereof, file, or cause to be filed, with the clerk of the circuit court for said dis-
55 trict a notice of severance, if you do not desire to be joined with the said Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, as an appellant in the prosecution of the said appeal.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, at Charleston, in said South Carolina district, the tenth day of April, 1871, and in the ninety-fifth year of the sovereignty and independence of the United States of America.

D. H. CHAMBERLAIN,
For Appellants.
D. T. CORBIN, *Of Counsel.*

Teste: DAN. HORLBECK,
C. C. C. U. S. for S. C.

We acknowledge service this 7th June, 1871.

SIMONTON & BARKER.

56 *Notice of severance.*

In the circuit court.

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

MORRIS K. JESSUP
vs.
REUBEN TOMLINSON ET AL.

The Northeastern Railroad Company, one of the defendants in the above-entitled cause, upon whom citation has been served to join with Reuben Tomlinson and others, appellants in prosecuting an appeal from the decree of the circuit court of the United States for the district aforesaid, in the above-entitled cause, hereby file in said circuit court their notice that they are content with the decree of the circuit court, and do not appeal therefrom, and do hereby sever from their co-defendants on said appeal.

THEODORE G. BARKER,
Def'd'ts' Solicitor.

57 *Order of severance.*

UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

REUBEN TOMLINSON, JOHN R. STOLL, AND others, appellants,
vs.
MORRIS K. JESSUP, APPELLEE.
In equity.

On reading the summons to the Northeastern Railroad Company to become a party to the appeal in this case from the decree entered on the 27th day of April, 1871, and the notice of the said company declining so to do, on motion of D. H. Chamberlain, esquire, solicitor for appellants—

Ordered that said appellants, Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, have leave to appeal from said decree without joining said Northeastern Railroad Company with them as appellants.

July 10th, 1871.

(Signed) GEORGE S. BRYAN,
58 *U. S. Judge, S. C. Dist.*

And now, here, to wit, the 10th day of July, A. D. 1871, the said Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, presented here to the said court their petition praying that an appeal be allowed them from the decree aforesaid, so rendered as aforesaid, to the Supreme Court of the United States, which appeal was duly allowed. The said petition is in words and of the tenor following:

Appeal.

UNITED STATES OF AMERICA,
South Carolina District, Fourth Circuit:

MORRIS K. JESSUP, A CITIZEN OF THE STATE of New York,
vs.
REUBEN TOMLINSON, A CITIZEN OF THE STATE of South Carolina, The Northeastern
59 Railroad Company, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, citizens of the State of South Carolina. } In equity.

To the honorable the judges of the circuit court of the United States for the district aforesaid:

The humble petition of Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, showeth:

1. That, by the decree dated the 27th day of April, A. D. 1871, in the above-mentioned cause, it was ordered that the decree of injunction theretofore granted, restraining your petitioners from proceeding to enforce the collection of taxes levied on the property of the said Northeastern Railroad Company, &c., be made perpetual.

2. That the said order, dated as aforesaid, is, as your petitioners are advised and humbly submit, erroneous, and the same ought to be reversed.

60 Your petitioners therefore humbly pray that they may be allowed an appeal from the said decree to the Supreme Court of the United States.

D. H. CHAMBERLAIN,
Solicitor for Petitioners.
D. T. CORBIN, *Of Counsel.*

Appeal allowed as prayed for.
By the court.
[SEAL.] (Signed) DAN'L HORLBECK,
C. C. C. U. S. for So. Ca.

61 *Waiver of security.*

REUBEN TOMLINSON AND OTHERS, APPELLANTS,
v.
MORRIS K. JESSUP, APPELLEE.

The appellee hereby consent' that appellants may appeal to the Supreme Court of the United States from the decree entered in the case of Morris K. Jessup against Reuben Tomlinson, The Northeastern Railroad Company, and others, on the 27th day of April, 1871, without security.

SIMONTON & BARKER,
Attorneys for Appellee.

JUNE 7, 1871.

62 UNITED STATES OF AMERICA,
South Carolina District:

I, Daniel Horlbeck, clerk of the circuit court of the United States for the said district, do hereby certify that the foregoing is a true transcript of the record in the case of Morris K. Jessup, complainant, against The Northeastern Railroad Company, Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, respondents.

In witness whereof I have hereunto set my hand and the seal of the said court, at Charleston, this twenty-sixth day of July, 1871, and in the ninety-sixth year of the sovereignty and independence of the United States of America.

[SEAL.] DAN. HORLBECK,
C. C. C. U. S. for S. C.

63 UNITED STATES OF AMERICA, *ss:*

To MORRIS K. JESSUP, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to an order of appeal filed in the clerk's office of the circuit court of the United States for the district of South Carolina, wherein Reuben Tomlinson, John R. Stoll, Philip Heller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox are appellants, and you are appellee, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness my hand this 10th day of July, A. D. one thousand eight hundred and seventy-one.

GEO. S. BRYAN,
U. S. Judge, S. C. Dist.

Service accepted July 11, 1871.

SIMONTON & BARKER.

(Indorsement on cover:) No. 351. Reuben Tomlinson, John R. Stoll, Phillip Keller, Dr. R. Vampill, R. J. Humphrey, E. W. M. Mackey, W. W. Ward, Robert Collins, and Thomas C. Cox, appellants, vs. Morris K. Jessup. S. Carolina C. C. U. S. Filed 17th October, 1871.

Supreme Court of the United States.

No. 125.

REUBEN TOMLINSON ET AL., APPELLANTS,

vs.

MORRIS K. JESSUP.

Personally came Solomon L. Hoge, Comptroller General of the State of South Carolina, before me, and made oath that, as it appears upon the records of the office of the Comptroller General of the State aforesaid, the amount of taxes levied for state and county purposes upon the property of the Northeastern Railroad Company, in said State, for the year A. D. 1868, is fifteen thousand seven hundred and fifty ($15,750) dollars, and for the year A. D. 1869, is fifteen thousand ($15,000) dollars; total for 1868 and 1869, thirty thousand seven hundred and fifty ($30,750) dollars, and that the said amount is involved in the cause above stated, now pending in the Supreme Court of the United States.

S. L. HOGE.

Sworn to and subscribed before me, this 28th day of January, A. D. 1873.

T. M. WILKES,
U. S. Com., So. Ca. Dist.

Supreme Court of the United States.

REUBEN TOMLINSON, *et als.*

v.

MORRIS K. JESSUP.

SUPPLEMENTAL BRIEF OF APPELLEE.

I. The power "to amend, alter, or repeal," even where it is expressly reserved in particular charters, or in general statutes, is *limited in its exercise.* Commonwealth *v.* Essex Company, 13 Gray, 239.

The charter of the Essex Company was subsequent to the provision of the Revised Statutes, ch. 44, § 23, viz: that every act of incorporation passed since 11 March, 1831, "or which shall be hereafter passed, shall at all times be subject to amendment, alteration, and repeal, at the pleasure of the Legislature."

It was contended for the Commonwealth, that "if the statute of 1856 imposes a new obligation upon the company, or makes more onerous an existing duty, it is within the power reserved to the Legislature."

The Commonwealth's attorney also contended, that "new and onerous duties, imposed on various corporations by the Legislature, serve to illustrate and confirm this;" referring to various acts, and quoting Roxbury *v.* Boston and Providence R. R., (6 Cush., 424,) and Massachusetts General Hospital *v.* State Mutual Life Asso'n., (4 Gray, 234.)

But the supreme court, Shaw, Ch. J., delivering the opinion, said:

"The Legislature had the power to regulate the public right, and to diminish or release it, as the best good of the public on the whole might in their judgment require. * * *

"Under these circumstances it appears to us, especially after it had been acceded to by the company, and after they have paid a large sum of money in pursuance of it, that this enactment has in it all the elements of a contract, executed by one party and binding on the other.

"5. The remaining question is, whether the act of 1856 is justified by the provisions in the Revised Statutes, ch. 44, § 23, that acts of incorporation afterwards passed should be subject to amendment, alteration, or repeal? * * *

"Does this come within the power to amend or alter? It seems to us to have some limit, though it is difficult to define it. Suppose an authority has been given by law to a railroad corporation to purchase a lot of land for purposes connected with its business, and they purchased such lot from a third party: could the Legislature prohibit the company from holding it? If so, in whom should it vest? or could the Legislature direct it to revest in the grantor or escheat to the public, or how, otherwise?

"Suppose an incorporated manufacturing company is authorized to erect a dam and flow a tract of meadow, and the owners claim gross damages, which are assessed and paid: can the Legislature afterwards alter the act of incorporation, so as to give to such meadow-owners future annual damages? Perhaps from these extreme cases—for extreme cases are allowable to test a legal principle—the rule to be extracted is this: that where, under power in a charter, rights have been acquired and become vested, no amendment or alteration of the charter can take away the property or rights which have become vested under a legitimate exercise of the powers granted.

"It appears to us, in the present case, that after the Government, acting in behalf of the public, and also of those riparian proprietors whose fish rights would be damnified by the defendant's dam, with the fishway as it was, entered into a solemn and formal contract with the defendant company to exempt them from the obligation of making and maintaining a suitable and sufficient fishway, if such was practicable, by indemnifying all parties damnified in their several fisheries, and the defendant company had executed their part of the contract by the payment of a large sum of money, it was not competent for the Legislature, without any change of circumstances, under their authority to

amend and alter the charter of the company, to pass a law requiring them to do the acts from which, by the terms of such contract, they had been exempted; and, therefore, that the said act was null and void, and this indictment, founded upon it, cannot be maintained."

The case of *Commonwealth* v. *Essex Company* is cited and approved in the case of the *Commissioners on Inland Fisheries* v. *Holyoke Water-Power Company*, (104 Mass., 446,) relied upon by the appellants.

In the latter case it was held, that the general law of Massachusetts, reserving the power to the Legislature "to amend, alter, or repeal," "first introduced into the *general legislation* of the Commonwealth by statute 1830, ch. 81, and re-enacted in the Revised Statutes, ch. 44, sec. 23, and the General Statutes, ch. 68, sec. 41, has been as much a part of all charters since granted, as if inserted therein," and yet the court say:

"The extent of the power reserved by such an enactment has been the subject of some diversity of judicial opinion, and a definition of its extreme limit is not necessary to this case. It is sufficient now to say, that it is established, by adjudications that we cannot disregard and the principles of which we fully approve, that it at least reserves to the Legislature the authority to make any alteration or amendment in a charter granted, subject to it, that will not defeat or substantially impair the object of the grant, or any rights which may have vested under it, and that the Legislature may deem necessary to secure either that object or other public or private rights.

"Upon the whole case, taking into consideration the terms of the charter of the Hadley Falls Company, and the power of alteration, amendment, and repeal previously reserved to the Legislature, *by the public statutes* of the Commonwealth, we are unanimously of opinion that the Legislature has not surrendered or restricted its inherent power of regulating and protecting the fisheries on the Connecticut river, and in so doing of providing for the maintenance of a suitable fishway in the dam erected by that corporation; and that the recent act compelling the making of such a fishway, does not impair the obligation of any contract of that corporation or its assigns, with the Commonwealth or any other party."

The case of the appellants falls far short of that of the Massachusetts commissioners on inland fisheries.

1. The provision of the 41st section of the act of 1841 was *not* "introduced into the general legislation" of the State of South Carolina by the "public statutes of the Commonwealth," was *not* "re-enacted in the Revised Statutes" and "the General Statutes;" but, on the contrary, it was *either* a section of a statute, declared to be a public act, and limited to ten years, *or* it was a final section of a private act, affecting certain corporations therein specifically chartered.

2. The power alleged to be reserved by the 41st section of the act of 1841 has *not* been "established by adjudications" in South Carolina, while on the other hand, *the exemption*, claimed by the appellee under act 1855, and sustained by the decree of the circuit court in this case, *has been* "established by adjudication" of the State court of appeals of South Carolina, in 1868, after thirteen years' enjoyment of the grant by the company.

The following is the judgment of the court of appeals:

"The North Eastern Railroad Company was incorporated in 1851," (12 Stat. S. C., 129.) "for the term of fifty years, and by a subsequent amendment of its charter (A. A. 1855, sec. 1, 12 Stat. S. C., 407,) 'the *stock*' of the company, and the real estate that it then owned, or should afterwards acquire, connected with or subservient to the works authorized in the charter, were exempted from all taxation during the continuance of the charter. The 'stock' of each of these companies, and its real estate employed in, or subservient to its chartered enterprise, are thus, in express terms, exempted from taxation. (State *vs.* Hood, 15 S. C. L. R., p. 185.) * * * *

"It is the judgment of this court, that each of the relators, the South Carolina Railroad Company, the Greenville Railroad Company, and the North Eastern Railroad Company, is 'exempted by law,' by the proper construction of the terms of its charter, from taxation upon 'its gross income,' and is consequently excepted from the operation of that clause of the 'act to raise supplies, &c., of Dec. 21, 1866,' in which is imposed a tax of one dollar on every

hundred dollars of 'the gross income of all railroads (not exempt by law.'") *Ibid.* 15, S. C. L. R., p. 192.

3. The terms of the charter of the North Eastern Railroad Company are, as explicit as words can make the contract, to exempt the company from all taxation for the definite term of years, and leave no room for the doubt which arose in the Hadley Falls Company charter, as to whether the Legislature has "surrendered or restricted its inherent power."

4. The forced construction given by the appellants to the general revenue act of 1868, by which it is held to be equivalent to an act "to provide for the assessment and taxation of property" generally in the State, and also a special act "to repeal so much of the charter of the North Eastern Railroad Company as granted it exemption from taxation," is far beyond the Massachusetts case. There the disputed statute only required that to be done by the corporation which was *consistent with the terms of the charter of the* Hadley Falls Company, and "did not impair the obligation of the contract," and was in the clearly intended exercise of a power to provide for the public interest, which power had not been "surrendered or restricted."

The State officials of South Carolina, for their authority to tax this corporation, directly in the teeth of the express exemption for a certain term, secured by special statute, can show no express or distinct reservation, by the State, of a power "to amend, alter, or repeal" the charter of the North Eastern Railroad Company; neither can they show a clearly intended or constitutionally expressed exercise of such power "to amend, alter, or repeal the charter" in whole or in part.

Nor is the alleged exercise of the power by implication competent to destroy the express grant.

The injunction of the circuit court therefore should stand.

THEODORE G. BARKER,
Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES.

REUBEN TOMLINSON, ET AL.,
vs.
MORRIS K. JESSUP.
No. ~~351~~ 125

BRIEF OF APPELLEE.

"An Act entitled 'An Act to amend the Charter of the Northeastern Railroad Company, and for other purposes.'"

1. Be it enacted, etc. That the stock of the Northeastern Railroad Company, and the real estate that it now owns, or may hereafter acquire, which is connected with or subservient to, the works authorized in the Charter of the said company shall be and the same is hereby exempted from all taxation during the continuance of the present Charter of the said company. * *

1. This is an express contract.

It is not pretended, in the answer of Reuben Tomlinson, that this statute, in itself, is not in terms a grant, and, in form and substance, a contract. Neither is it disputed, *in the record*, that the State of South Carolina received the usual consideration, upon which all such grants to corporations are presumed to rest.

Neither is the allegation of the bill disputed, that the complainant below "upon the faith of said contract became a purchaser of shares of the capital stock of said company, and has outlayed large sums of money in acquiring the rights of a share holder therein."

In deference to the language used by the Court in the case of Wilmington Railroad *vs.* Reid, we will not cite authorities to prove, that the Act of 1855 above quoted is a contract, nor will

we, for like reason, discuss the question of actual consideration, which is not made in the record. "It has been so often decided by this Court, that a charter of incorporation, granted by a State, creates a contract between the State and the corporators, which the State cannot violate, that it would be a work of super-erogation to repeat the reasons on which the argument is founded." Wilmington Railroad *vs.* Reid, 13 Wallace, p. 264.

The Act of 1855, granting the exemption to the Northeastern Railroad Company, is not less explicit, than the contract in the case of the Wilmington and Weldon Railroad, and satisfies the requirements of the Court thus laid down:

"If, however, the contract is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the duty of the court to give effect to it, the same as if it were a contract between private persons, without regard to its supposed injurious effects upon the public interests."

* * If there be no constitutional restraint on the action of the Legislature on this subject there is no remedy, except, &c.

* * There is no difficulty in this case. The General Assembly of North Carolina told the Wilmington and Weldon Railroad Company, in language, which no one can misunderstand, that, if they would complete the work of internal improvement for which they were incorporated, their property and the shares of their stockholders should be forever exempt from taxation."

Change the name of the corporation to "the Northeastern Railroad Company" and the time of duration of the exemption from "forever" to "during the continuance of the present charter" and the State of "North Carolina" to that of "South Carolina," and the rest of the language must be adopted as the law of this contract.

2. The act of 1855 contains no reservation of a right to repeal, alter or amend it.

If it were a question of intention, the intent of the State to abandon all right to repeal, must be presumed by its not making the reservation expressly in the charter, and otherwise, by the express terms used in the contract, which exclude all implied intent.

"The grant of the crown shall be taken according to the express intention comprehended in the grant, and shall not

extend to any other thing, by construction or implication, which doth not appear by the grant, that the intent did extend to.

Englefield's Case, 7 Coke's R., 14—A.

There is no question of intention, so far as the act of 1855, granting this exemption, is concerned. The terms of the contract are plain—

"*Absoluta sententia expositore non indiget:*" "this is the case," says Lord Coke, "where the words are plain, without any scruple, and absolute without any saving."

Dwarris on Statutes.

"*Quoties in verbis nulla est ambiguitas, ibi nulla expositio contra verba fienda est*—In the absence of ambiguity no exposition shall be made which is opposed to the express words of the instrument."

Brooms' Legal Maxims, 551.

"It may be scarcely necessary to observe that the maxim under consideration applies equally to the interpretation of an act of Parliament; the general rule being *a verbis legis non est recedendum.* A court of law will not make any interpretation contrary to the express letter of a statute, for nothing can so well explain the meaning of the makers of the act as their own direct words."

Ibid., p. 555

It becomes, therefore, the duty of this court to give force and effect to the act of 1855, according to its plain and explicit terms.

THE POSITION OF THE APPELLANTS.

What is said in the answer is in effect this: That, notwithstanding the State may have received, and may be still receiving valuable consideration for its grant of this exemption, and notwithstanding the Act of 1855 is, in form and substance, *in itself*, a contract, *yet*, that the 41st section of the Act of 1841, "was of force and effect, when the charter of the Northeastern Railroad Company was granted, and did, as matter of law, enter into and form part and parcel of said charter of said company, and that in consequence thereof the said charter of said company has been, and is, at all times subject to amendment, alteration, and repeal by the legislative authority."

The appellee contends, in reply to this —

1. That the 41st section of the Act of 1841 is inoperative and void, as against the express provisions of the Act of 1855.

"Void Statutes." "Of no validity and void are, it is alleged, 1st. Such acts as affect to bind future Parliaments; 2d. Such as are contrary to the laws of God and nature, and to right reason." * * As to the former proposition it is clearly maintainable: Subsequent parliaments cannot be restrained by the acts of former ones. It is only necessary to repeal the ordinance to destroy the prohibition, and without a formal repeal it seems that the act is *ipso facto* void."

Dwarris on Statutes, 478.

If the Act of 1841 had the "force and effect" attributed to it, it would have been, *ab initio*, in derogation of all express contracts, however unqualified and absolute in their terms, which subsequent Legislatures might see fit to enter into. Its dominating force and controlling power would reduce every grant, however express and solemn, based upon consideration however valuable, from a grant to a mere privilege. In America, the Constitution, or fundamental law alone has such restraining force and dominating power. Says Blackstone:

"Acts of Parliament derogatory from the power of subsequent Parliaments bind not. So the Statute 11, Hen. vii., c. i., which directs that no person for assisting a King *de facto* shall be attainted of treason by Act of Parliament or otherwise, is held to be good only as to common prosecutions for high treason; but it will not restrain or clog any parliamentary attainder. Because the Legislature being in truth the sovereign power, is always of equal, always of absolute authority; it acknowledges no superior on earth, which the prior Legislature must have been, if its ordinances could bind a subsequent Parliament. And upon the same principle Cicero, in his letters to Atticus, treats with a proper contempt these restraining clauses which endeavor to tie up the hands of succeeding Legislatures."

1. Black. Com., 90.

"Although this reasoning does not in all its particulars apply to the American Legislatures, the principle applicable in each case is the same."

Cooley's Con. Lim., p. 126.

The absolute right, therefore, of the Legislature of South

Carolina, in 1855, to disregard the restraining provisions of the Act of 1841, and to make an express contract, independent of all restraint except those imposed by the Constitution of the State, cannot be doubted. It cannot be maintained, therefore, that its contract with the Northeastern Railroad Company is "*subject to* the provisions of the 41st Section of the Act of December 17, 1841," as is said in argument.

2. Neither did the said 41st Section, as is contended, "*by its own force become part*" of the Act of 1855.

The Act of 1855 must be presumed to express the entire Legislative will, as to the particular subject matter, at the time of its enactment—and to exclude every idea, not expressed. No qualification can be intended of that which is expressed, is a fundamental rule of all contracts and statutes.

Earlier

The cases ~~all~~ hold that the reservation of the power to repeal must be contained *in the charter itself.*

Wales *vs.* Stetson, 2 Mass. R., 143, 146.

The only way in which the 41st Section of the Act of 1841 can "become part of the Act of 1855," is, for the court to import it, by construction or implication, as a silent term, into the later Act, which is contrary to all rules of express contracts and of statutes.

"A statute, it has been said, is to be so construed, if possible, as to give sense and meaning to every part; and the maxim was never more applicable than when applied to the interpretation of a statute that *Expressio unius Est Exclusio alterius.*"

Brooms's Maxims, p. 592.

There can be no silent term in an express contract or statute for "*Expressum facit cessare tacitum.*"

But the court cannot read the 41st Section of the Act of 1841 as a Section of the Act of 1855, because it is inconsistent with the express terms of the Act, and, therefore, void as a proviso, condition or qualification.

By the Act of 1855 the State makes an absolute grant of this exemption for a definite term of years. By the theory contended for, the 41st Section of the Act of 1841 comes in as a clause of the grant, and declares this *estate for years*, so granted, to be *at the will* of the grantor. If read as a clause of the Act it would be destructive, and, therefore, void.

"A condition upon a feoffment in fee not to alien is void, because it is repugnant to the estate."

Bacon's Abrig. Tit. Condition, vol. 2, p. 301.

"If a thing be granted generally, and there comes a viz., which destroys the grant, it is void, being repugnant to the thing first granted."

Bacon's Abrig. Tit. Grant, vol. iv., p. 526.

"As if there be a demise of a parsonage with the land and woods, except the woods; this exception is void, for the woods being *specially* granted in the premises cannot be restrained afterwards."

Ibid.

"If one makes a lease for ten years, at the will of the lessor, this is a good lease for ten years certain, and the last words are void for repugnancy."

Ibid., 527.

If the 41st section of the Act 1841 be read, as a clause of the Act 1855, then the Legislature has, in effect, made a grant of the estate for forty-six years, at the will of the State, which is a good grant for forty-six years certain.

"A saving, totally repugnant to the body of the Act, is void. If, therefore, an Act of Parliament vests land in the King and his heirs, saving the right of all persons whatsoever, or vests the land of A in the King, saving the right of A; in either of these cases the saving is totally repugnant to the body of the statute, and (if good) would render the statute of no effect or operation; and, therefore, the saving is void, and the land vests absolutely in the King."

1. Blackstone's Com., p. 89.

4. The Act of 1841 is not a general law. It is not even declared to be a public Act. It meets none of the requirements of such Acts.

"A general or public Act is an universal rule that regards the whole community, and of this the courts of law are bound to take notice judicially and *ex officio*, without the statute being particularly pleaded or formally set forth by the party who claims an advantage under it."

1 Blackstone, p. 86.

On the contrary, the Act of 1841 is within the class of "special or private Acts;" which, says Blackstone, "are rather ex-

ceptions, their rules being those which only operate upon particular persons and private concerns, such as the Romans entitled *senatus decreta*, in contradistinction to the *senatus consulta*, which regarded the whole community; and of these (*which are not promulgated with the same notoriety* as the former) the *judges* are *not bound* to take *notice*, unless they be formally pleaded."

Ibid., p. 86; and note 23 by Chitty.

"In many statutes, which would otherwise have been private, there are clauses by which they are declared to be public statutes."

The Act of 1841, from its first to its XI. Section inclusive, incorporates Newberry Village, and makes certain provisions for its government.

The XI. section is peculiar. It declares as follows:

"This Act shall be deemed and taken to be a public Act, and shall continue of force for ten years, and until the end of the session of the Legislature the next following."

If this section applies to the whole Act, so as to make it a public Act, then it must be held to have expired at the end of the session of the Legislature following the expiration of ten years from 19th December, 1841, viz: the end of the session of 1851. If it be construed to apply only to the preceding sections, (although it does not refer to them,) then the provision shows that it was a private Act, and the Legislature found it necessary to declare it a public Act as to those sections, and not to any others.

The appellee, of course, contends that by its own limitation, the whole Act had expired in 1851, and did not control, enter into, become part of, or in any way affect the Act of 1855.

By the XII section of the act of 1841, the town of Yorkville was incorporated.

By the XIII section, the Cheraw Bridge Company was rechartered.

By the XIV section, the powers of the Town Council of Aiken were increased.

By the XV section, the Cheraw Academical Society was reincorporated.

By the XVI, the Pendleton Farmers' Society; by the XVII, the Zion Church, of Winnsboro'; by the XVIII, the village of

Greenville; by the XIX, the South Carolina Manufacturing Company; and by the XX, the Charleston Fire Company of Axemen; and so on through a list of private enactments, down to the XLIst section, which declares as follows:

XLI. "Be it further enacted, That it shall become part of the charter of every corporation which shall, at the present or any succeeding session of the General Assembly, receive, &c." (Record, p. 17.) Statutes of South Carolina, XI vol., p. 162.

This section evidently applies to the charters, mentioned in the previous section, and "which shall be granted at the present session" of the Legislature. The general words added, "any succeeding session of the General Assembly," must be restrained by the preceding particular words and be held to refer to the acts of the Legislature of 1841, and not to control the action of future, coequal, independent Legislatures, equally competent, with the Legislature of 1841, to grant charters, make contracts, and to legislate generally or specially. To hold otherwise would be to suppose, that the Legislature of 1841, distrusting the wisdom and virtue of future Legislatures, felt it to be necessary "to tie up their hands" or "clog" their action, lest they might make unwise enactments or be unable to express the will of the State as well as the prior Legislature. This is not to be attributed to the Legislature of 1841; and it would be equally derogatory of that of 1855 to suppose, that it did not know what it intended and did not express its entire will in its enactment.

5. The Act of 1855 and the Act of 1841 cannot be construed together as *in pari materia*, so as to give force and effect to both, because they are irreconcilable with each other. In such conflict the prior act must give way.

"If two inconsistent Acts be passed at different times, the last, 'said the Master of the Rolls,' is to be obeyed, and if obedience cannot be observed, without derogating from the first, it is the first which must give way. Every Act of Parliament must be considered with reference to the state of the law subsisting and when it is to be applied; it cannot otherwise be rationally construed. Every Act is made either for the purpose of better declaring the law, and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment." Dwarris Stat., p. 531; The Dean of Ely *vs.* Bliss, 5 Beav, 582.

"*Leges posteriores priores contrarias abrogant.*"

6. Language is used in the 8th paragraph of the answer of Reuben Tomlinson, (record p. 17,) not justified by the Statutes, and calculated to mislead the mind of the Court. The appellant contends that no contract between the Norteastern Railroad Company and the State has been violated by the assessment and taxation, under existing laws, of the property of the Northeastern Railroad Company, "*inasmuch as the right to repeal, modify or amend the said charter was at all times* EXPRESSLY reserved by the State."

It would naturally be supposed, by these words, that the State had inserted in the charter of the said Company a clause in which the right of repeal was EXPRESSLY reserved. No such express reservation occurs in either the original charter or the amendment, in 1855, containing the grant of the exemption from taxation for the term of the charter. These grants were made without any reservation *in the charter* of a right to repeal, or any allusion to the act of 1841.

The seventh paragraph of the answer, (record p. 17,) claims that "the exemption from taxation, before granted to the said Northeastern Railroad Company, was repealed."

It is, therefore, by the language used, conceded by the appellant that the exemption from taxation was good until the charter was repealed. Nothing could more forcibly illustrate the emptiness of the seemingly solemn act of the Legislature of 1855, granting the Company an exemption from taxation, so ample and clear in its terms, and for a period of forty-six years, viz: during the continuance of its charter, than the supposition that the Legislature, at the same time, meant to say no more than this: "Your property shall be and hereby is exempt from all taxation while your charter lasts, *unless* the State, *at any time*, sees fit to tax you;" or, in other words, "You shall be exempt from taxation until you cease to be exempt." Such emptiness and deceit in intention is not to be attributed to the Legislature.

If the exemption be held to have been ever granted by the act of 1855, the right of the State was divested, and the thing granted vested in the grantee.—*Bacon's Abrig. Tit. Grant.*

If the right of the State to tax was not divested, and the exemption for the term of years of the charter was not vested in

the Northeastern Railroad Company, then the act of 1855 was nugatory, and the State gave nothing, not even a privilege.

A privilege granted upon consideration, and accepted by the grantee, becomes a contract, beyond the power of the grantor to revoke it.—*Ibid: Dartmouth College vs. Woodward, 4 Wheaton 518; Fletcher vs. Peck, 6 Cranch 87, 136.*

As a practical illustratien of the logical results of the theory of the "force and effect" of this 41st Sec, of the Act of 1841, upon the express contracts of the State, it is only necessary to refer to the amendment of the Charter of the Northeastern Railroad Company, viz. in the year 1854 which, according to the theory, was granted, "subject to" the power of the legislature to repeal, alter or amend it at will.

By its original Charter, the Northeastern Railroad Company was authorized to build its road "from the City of Charleston" to some point on the Wilmington Road. The corporate limits of the city at that time extended and are still about two miles beyond the settled and business portions, near which the road had selected and purchased a site for a Depot. Land owners within the corporate limits, resisted the attempt of the Railroad to condemn land under their Charter, within the corporate limits, and contended that the word "from" in the charter was exclusive, and meant "from without, and not from a point within, Charleston." The Courts sustained the land owners, and the Company had to go to the Legislature and procure the amendment of their charter, giving them the right to come into the city on certain terms. The grant was accepted, and upon its faith, very large sums of money within the corporate limits have been expended in the purchase of a site for depot, yards and works; and the value of much of the road depends upon its terminus within the city.

Upon the theory of the power of the Act of 1841, in reserving the right of the State to repeal the amendment, it would be in the power of any Legislature, by a repealing act, to deny the right to the road to reach its city depot, and by a single caprice, *to destroy the entire enterprise.*

Should the Court hold, that the charter of the Northeastern Railroad Company containing the exemption from taxation, expressly granted in 1855, for a definite term of years, is subject to repeal at will, by the State, then the appellee contends—

1. That the repeal must be express.

"A later Statute, which is general and affirmative, does not abrogate a former which is particular."

Dwarris on Statues, p. 532.

"Affirmative words do not take away a prior exemption." Ibid, p. 532, citing Rex *vs.* Pugh, 1 Doug., 135.

"Neither is a bare recital in a statute without a clause of repeal sufficient to repeal the positive provisions of a former statute." Dore *vs.* Grey, 2 T. R.

The Constitution of the State of South Carolina, ordained in 1868, in the sections quoted by appellant (record p. 16) as repeals of the Act of 1855, makes no allusion to the Act, nor to the exemption, nor to the Northeastern Railroad Company, and cannot be construed to have been intended as such repeal by the Convention. Its work was not special legislation, but the ordaining of future general laws. The language used is general and affirmative, and must be held to apply to corporations and property, *not specially exempted*. It does not purport to act directly upon any vested right, or present exemption, or property, but contemplates future action by the Legislature, subject (it, of course, must be held,) to the rules of law. Nothing in the Constitution repeals the Act of 1855, or dispenses with the necessity of an Act passed for that end (supposing the Act of 1855 to be subject to repeal.)

For the like reasons, the general affirmative clauses of the Tax Act of 1868, imposing burthens on railroads generally, cannot be construed to be a repealing Act of the special Statute of 1855, taking away an exemption, which had been expressly granted for a fixed term of years. The Constitution of 1868 itself forbids such legislation.

Art. II., Sec. 20. "Every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in its title."

The Act of 1868 is *an Act for raising revenue*, and its title is "An Act to provide for the assessment and taxation of property." It does not purport to be a repealing Act, nor does it

mention the Act of 1855, nor the exemption, nor the Northeastern Railroad Company.

The theory of appellants, in clause 7, of their answer, (record page 17,) is "That upon the adoption of the present Constitution and the passage of the said act hereinbefore named, 'to provide for the assessment and taxation of property,' the exemption from taxation before granted to the said Northeastern Railroad Company was repealed, and that *thenceforth* the said company *become liable*, and is now *liable* to taxation under the laws of the said State.

From this we are to suppose that, until the passage of the act of September, 1868, "the exemption from taxation before granted" was *not* repealed, and that it was not repealed by the Constitution adopted by the Convention in March, 1868, but by the act of the Legislature, passed in September, 1868.

At the same time the appellants admit the insufficiency and inapplicability of the act of 1868 alone, as the repealing act, and are driven, therefore, to the two sections of the Constitution quoted, to aid the act of 1868, and build up, by taking the three together, their theory of constructive repeal.

It is submitted that this sort of repeal by implication is against established principle.

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